

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

GLENN LACY DURHAM,
Petitioner

V.

RICK THALER, Director, TDCJ-CID,
Respondent

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CIVIL ACTION NO. C-09-256

**MEMORANDUM OPINION AND ORDER DENYING APPLICATIONS
FOR CERTIFICATE OF APPEALABILITY AND FOR LEAVE TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

Petitioner, an inmate at TDCJ-CID's McConnell Unit in Beeville, Texas, filed this petition *pro se* and *in forma pauperis* pursuant to 28 U.S.C. § 2254, challenging a Kleberg County conviction for murder (D.E. 1, 10). Petitioner's motion for entry of default judgment (D.E. 12) was denied on February 5, 2010 (D.E. 16). On February 16, 2010, petitioner filed a notice of appeal to the Fifth Circuit of the order denying his motion for entry of default judgment (D.E. 18). Pending are petitioner's applications (1) for a certificate of appealability (D.E. 19); and (2) for leave to proceed *in forma pauperis* on appeal (D.E. 20).

Petitioner was granted leave to proceed *in forma pauperis* on October 22, 2009 (D.E. 8); therefore he is permitted to proceed *in forma pauperis* on appeal unless the district court certifies that the appeal is not taken in good faith. FED. R. APP. P. 24(a)(3). "Good faith" means that the issues on appeal are not frivolous. Coppedge v. United States, 369 U.S. 438, 445, 82 S.Ct. 917 (1962).

In this case the order denying default judgment is not an appealable final judgment for purposes of 28 U.S.C. § 1291, nor is it an interlocutory order subject to appeal. 28 U.S.C. § 1292; Adult Film Ass'n. of America v. Thetford, 776 F.2d 113 (1985). Petitioner's appeal is not taken in good faith, his application for leave to proceed *in forma pauperis* is denied, and his application for a certificate of appealability is denied as moot.

ORDERED February 22, 2010.

A handwritten signature in black ink, reading "Hayden Head", is written over a horizontal line.

HAYDEN HEAD

SENIOR UNITED STATES DISTRICT JUDGE